

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

JAMES LEON SCOTT,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD77555

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 9, 2015

Appeal From:

Circuit Court of Adair County, MO
The Honorable Russell Ellis Steele, Judge

Appellate Judges:

Division One
James Edward Welsh, P.J., Thomas H. Newton, and Karen King Mitchell, JJ.

Attorneys:

Casey Taylor, Columbia, MO

Counsel for Appellant

Attorneys:

Shaun Mackelprang, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**JAMES LEON SCOTT, Appellant, v.
STATE OF MISSOURI, Respondent**

WD77555

Adair County

Before Division One Judges: Welsh, P.J., Newton, and Mitchell, JJ.

James Scott appeals the circuit court's judgment denying his claim that he was abandoned by counsel in his Rule 24.035 post-conviction case, in which he sought relief from his plea of guilty to possession of a controlled substance. Scott contends that the circuit court clearly erred in finding that he was not abandoned because post-conviction counsel: (1) failed to present his statement in lieu of an amended motion to Scott before filing it in the motion court, as required by Rule 24.035(e), and (2) did "virtually nothing" on his behalf.

Affirmed.

Division One holds:

Scott fails to prove that the circuit court clearly erred in finding that he was not abandoned by counsel's failure to present his statement in lieu of an amended motion to Scott before filing it. Scott cites no case which holds that such a failure constitutes abandonment. He also fails to show how he was prejudiced by this failure, in that the circuit court examined and ruled on Scott's claim of abandonment and also on the merits of each of his *pro se* claims.

Scott also fails to demonstrate that he was abandoned by counsel's alleged "complete absence of performance" (*Luleff v. State*, 807 S.W.2d 495, 497 (Mo. banc 1991)), in his post-conviction case. Counsel examined Scott's *pro se* Rule 24.035 motion, determined that an amended motion was unnecessary, and filed a statement in lieu of an amended motion instead, as permitted by Rule 24.035(e). The judgment is affirmed.

Opinion by James Edward Welsh, Presiding Judge

June 9, 2015

* * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
